

## REMARKS

By this amendment claims 3, 4, 10, 12, 17, 18, 19 and 28 have been amended. Claims 5-9, 11, 15, 16, 22 and 24-28 have been cancelled. Claims 29 and 30 have been added. No new matter has been entered. Accordingly, claims 3, 4, 10, 12-14, 17-21, 23, 29 and 30 are now pending in the application. Reconsideration and allowance of all of the claims are respectfully requested in view of the foregoing amendments and the following remarks.

### Regarding Office Action Paragraph 1 – Rejection under 35 U.S.C. 101

Examiner has rejected claims 3-28 under 35 U.S.C. as she believes 35 U.S.C. 101 states "Whoever invents or discovers any new and useful process, machine, manufacture or composition of matters, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title." In the decision of the United States Supreme Court in *Diamond v. Chakrabarty*, 447 U.S. 303, 206 USPQ 193 (1980) the Court stated that a "nonnaturally occurring manufacture or composition of matter – a product of human ingenuity – having a distinctive name, character [and] use" is patentable. Applicants are claiming an ATV. There can be no question that an ATV meets the definition set forth by the Court and is therefore patentable subject matter. Applicants are claiming the dimensions of the ATV relative to a 'standard rider' in a 'standard position'. Examiner is mistaken in her understanding of what is being claimed. Applicants do not seek exclusivity on a "standard rider" and/or a "standard position". Applicants are not claiming either a standard rider or a standard position *per se*. Applicants are only claiming an ATV relative to them. In simpler terms, the standard rider and the standard position are part of the metrics by which an ATV will be judged to determine whether or not it is within the scope of the claims, they are not being claimed themselves. The situation is analogous to Applicants claiming an ATV having a certain length (e.g. 250 cm). In this situation it should be clear that is the ATV that is being claimed, not the Metric System of measurement, nor the device (e.g. a tape measure) by which one would do the measuring. It is clear that the present claims are directed to statutory subject matter and comply with 35 U.S.C. 101.

Reconsideration and withdrawal of the objection is respectfully requested.

Regarding Office Action Paragraphs 2 and 3 – Rejection under 35 U.S.C. 103

Claims 4-10, 15-18 and 24-28 are rejected under 35 U.S.C. 103 as being unpatentable over Matsuura (US Patent 6,622,806).

Claim 11 is not rejected by the Examiner under 35 U.S.C. 103. It recites the upper surface of the front footrest being positioned below the upper surface of the rear footrest. Applicants have included the limitation of claim 11 into new independent claim 29.

Claims 3, 4, 10, 12-14, 17-21, 29 and 30, still pending in the application, depend from claim 29. All these dependent claims are therefore believed to be allowable for the reasons described above and for the additional limitation recited therein.

Claim 27 has been replaced by new claim 29 to clarify the feature. This amendment was made for clarification purposes and not to distinguish over prior art. Therefore, following the decision in *Festo Corp. V. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722, 122 S.Ct. 1831, 1840, 62 USPQ2d 1705, 1712 (2002) and its progeny, the claims should not be subject to any narrowing limitations under the doctrine of equivalents, should claims be litigated.

Claims 6-9 directed to the longitudinal length of each of the right and left footrests have been cancelled.

Claim 24 directed to a specific ratio of the wheelbase to the longitudinal length of the footrest has been cancelled.

Claim 28 directed to a specific tire air pressure has been cancelled.

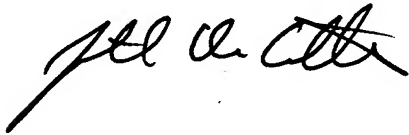
Reconsideration and withdrawal of the rejection is respectfully requested.

Conclusion

In view of the above amendments and remarks, the Applicant respectfully submits that all of the currently pending claims are allowable, and that the entire application is in condition for allowance.

Should the Examiner believe that anything further is desirable to place the application in better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J.D. Cutler', written in a cursive style.

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